# ATTACHMENT A

# DECISIONS TO BE MADE PRIOR TO AMENDMENT OF STATE SPECIAL EDUCATION REGULATIONS BASED ON THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT OF 2004

The federal Individuals with Disabilities Education Act (IDEA) was amended in 2004. Because of changes in this federal law, Kentucky's state administrative regulations contained in 707 KAR Chapter 1 will have to be revised. Most of the changes are necessary in order to conform to the new federal law. There are several areas of the new federal law, however, that will require state regulations on subjects but will give discretion to the states. Consequently, the Kentucky Board of Education and the Kentucky Department of Education (KDE) must make decisions as to how to proceed in the drafting of state regulations around these issues. Below are the areas of IDEA that require states to make decisions as to what will best ensure an appropriate education for students with disabilities. Included in the last column are recommendations that represent at least a majority of the input from parents, teachers, administrators, students, KDE staff and others that were received through public forums and an electronic survey on the KDE web page.

<b>Current State</b>	Federal Statute	KDE Recommendations
Regulation		
707 KAR 1:310	<b>Decision point</b>	Stakeholders have overwhelmingly stated that it would be better to have
Eligibility	Section 614 (6) lists new	statewide criteria for a specific learning disability. If districts set their
	requirements for determining if a	own criteria, it would be very confusing for serving students who
	child has a specific learning	transfer from one district to another. A Learning Disabilities (LD) Task
	<b>disability</b> . The proposed federal	Force, consisting of stakeholders from school districts, higher education
	regulations address the issue of	and KDE, has been meeting to review research and make
	statewide v. districtwide	recommendations for a uniform criteria for eligibility. The
	eligibility criteria and indicate	recommendations will be ready prior to the drafting of revised state
	that the state <i>may</i> establish	administrative regulations.
	statewide criteria.	

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# 707 KAR 1:320 Individual education program

## **Decision point**

Section 614 (a) (1) (C) allows for a **60-day timeline** from receipt of parent consent for initial evaluation until the eligibility determination for the student, unless the state has adopted a different timeline. The federal law means calendar day.

707 KAR 1:320, Section 2 (2) states that "A Local Education Agency (LEA) shall ensure that within sixty (60) **school days** following the receipt of the parent consent for an initial evaluation of a child: (a) the child will be evaluated; and (b) if the child is eligible, specially designed instruction and related services will be provided in accordance with the Individual Education Program (IEP)." It is recommended to keep this language.

#### **Decision point**

Section 614 (d) (1) (C) Federal law allows for an IEP team member to be excused from attending a meeting if the parents and LEA agree that attendance is not necessary because that member's curriculum area or related service is not being discussed or even if the member's area is to be discussed. that person can be excused if the parent and LEA agree and the member submits a report in writing to the meeting with their input on the development of the IEP.

707 KAR 1:320, Section 3 does not allow for any member to be excused from the Admissions and Release Committee (ARC) meeting. It is recommended that the federal standard not be adopted because this change could prohibit a thorough discussion of the needs of the student by all staff working with that student. Schools that are successfully closing the achievement gap use the ARC meeting as an opportunity for real planning and discussion about the student's needs. (The Kentucky Schools Board Association (KSBA) disagrees and would prefer to use the federal language that allows districts to make these decisions).

### **Decision point**

Section 614 (d) (1) (A) only requires **benchmarks or short-term objectives** for students "who take alternate assessments aligned to alternate achievement standards."

# **Decision point**

Section 614 (d) (3) (C) allows there to be **changes made to an IEP** without an ARC meeting.

## **Decision point**

Section 614 (d) (1) (A) (i) (VIII) allows the **postsecondary transition** planning to begin no later than the IEP developed when the child turns 16.

707 KAR 1:320, Section 5 requires benchmarks or short-term objectives for all students. It is recommended that the state regulations be amended to make it permissible to use benchmarks or short-term objectives if the ARC deems it appropriate. Many teachers may wish to use objectives because they allow teachers to put large tasks into manageable lessons. Additionally, there would still be requirements on collecting progress data and reporting on that progress.

707 KAR 1:320 does not allow for amending or revising to the IEP without an ARC meeting to discuss the need for the changes. It is recommended that no major changes such as substantive changes to type, duration or amount of services or goals and objectives be made in an IEP without an ARC meeting. To allow such changes without an ARC meeting would inhibit the team approach to planning for the student that is a key component of the law and good practice. (KSBA would prefer to give districts the discretion to make these decisions **or** to give more guidance/specificity on what "substantive changes" means). KDE will provide additional guidance on the meaning of "substantive changes".

707 KAR 1:320, Section 6 currently requires the process to begin at least when the child is 14 with a statement of transition services needs and the actual services to begin at least at age 16. It is recommended that this approach remain the same. There are already too many students with disabilities not successful in postsecondary life. To postpone the transition planning process could increase the number of students not making a successful transition.

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707 KAR 1:340 Procedural safeguards and state complaint procedures	Decision point Section 615 (b) allows for a judge to appoint a surrogate but does not require it.	707 KAR 1:340 requires a Local Education Agency (LEA) to appoint a surrogate for any child that needs one. It is recommended that the regulation provision remain the same because it would take a lot of training of judges as to when and who should be a surrogate. On the other hand, school districts already understand the need for surrogate parents, how to solicit and train them and when they must be appointed. (KSBA would prefer using the federal standard to prevent confusion and the potential of districts having to comply with court orders anyway. KSBA offers to assist KDE in training of judges about this federal standard).
	Decision point Section 615 (k) (1) (G) allows school personnel to remove a child to an alternate placement for weapons, drugs or serious injury.	707 KAR 1:340, Section (10) currently requires an ARC to make these decisions. It is recommended that the current state administrative regulations remain the same with the following additions: a) an explanation of steps that school personnel can take immediately to ensure the safety of students and staff, b) clarification of when school personnel may suspend or remove a student from school without an ARC process, and c) alternative means by which ARC meetings may be conducted, i.e., telephonic conferences, etc.  (KSBA would prefer the state regulations to allow school personnel to remove a child to an alternate placement and not the ARC in order to give the districts more flexibility, to add the removal due to serious bodily injury as an exception to the "stay put" rule and to allow for interim alternative educational placements to be up to 45 "school days").  KDE will comply with the federal law on the "stay put" issue and the 45 "school days" issue when the new regulations are drafted.